United States Department of Labor
Employees' Compensation Appeals Board

H.K., Appellant	)	
and	)	**Docket No. 19-0429**
	)	**Issued: September 18, 2019**
U.S. POSTAL SERVICE, LOS ANGELES NETWORK DISTRIBUTION CENTER, Bell Gardens, CA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On December 18, 2018 appellant filed a timely appeal from a November 14, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that following the November 14, 2018 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id*.

ISSUE

The issue is whether appellant has met his burden of proof to establish diagnosed medical conditions causally related to the accepted September 2, 2018 employment incident.

FACTUAL HISTORY

On September 17, 2018 appellant, then a 69-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on September 2, 2018 he injured his neck and back lifting boxes into big containers while in the performance of duty. He stopped work that day and received continuation of pay.

In a September 21, 2018 statement, J.C., appellant's supervisor, noted that on September 2, 2018 appellant worked until lunch. When J.C. directed appellant to perform tray sorter duties, appellant indicated that his neck hurt and he was going home. J.C. reported that appellant called in sick from September 6 to 17, 2018 and sought chiropractic treatment.

On September 16, 2018 Dr. Dan Diep, a chiropractor, released appellant to limited work with a five-pound lifting restriction.

In a September 18, 2018 note, Yong S. Kim, Ph.D., an acupuncture specialist, indicated that he provided acupuncture treatments on September 4, 6, 10, 12, and 17, 2018 for appellant's shoulder, neck, and low back symptoms.

OWCP also received work status reports from a physician assistant dated September 20, 24, and 30, and October 1, 2018, noting diagnoses of myofascial and lumbar strain.

In a development letter dated October 11, 2018, OWCP informed appellant that the evidence of record was insufficient to establish his claim. It advised him of the type of medical evidence necessary to establish his claim and afforded him 30 days to submit the necessary evidence.

OWCP received a copy of a September 16, 2018 disability release form from Dr. Diep and a copy of a September 18, 2018 treatment report from Dr. Kim.

In a duty status report (Form CA-17) dated October 1, 2018, a physician assistant noted an injury date of September 2, 2018, and clinical findings of back pain and limited range of motion. He indicated that appellant was able to work with restrictions. OWCP also received progress reports dated September 1 and 24, and October 1, 8, and 24, 2018, from a physician assistant.

In a September 20, 2018 form report, Dr. Kaochoy Saechao, an occupational medicine specialist, related that on September 2, 2018 appellant was working in his unit, but after his 1:00 a.m. break, he experienced neck and back pain. She indicated that there "are no known preexisting conditions" and also noted, "[t]here was no specific event of an injury or illness. There are known prior acute trauma or cumulative trauma to the affected body part, pain in his upper and lower back from repetitive motion, lifting, carrying of packages as a postal worker." Dr. Saechao diagnosed thoracic myofascial and lumbar strain.

In an October 24, 2018 report, Dr. Zainab Mahmoud, a family medicine specialist, diagnosed intervertebral disc degeneration, lumbar region, strain of muscle, fascia and tendon of the lower back, and strain of muscle and tendon of wall of thorax. She repeated from Dr. Saechao's report that "there was no specific event of an injury or illness" and again indicated that there was no prior acute trauma or cumulative trauma to the affected body part, pain in his upper and lower back from repetitive motion, lifting, carrying of packages as a postal worker. Dr. Mahmoud also noted that appellant had not been receiving ongoing treatment for prior trauma and indicated that he could return to work with restrictions on that date, with an expected maximum medical improvement of October 26, 2018. OWCP continued to receive progress and work status reports from Dr. Mahmoud.

An October 31, 2018 physical therapy report, countersigned by Dr. Minh Nguyen, an osteopathic physician specializing in occupational medicine, diagnosed intervertebral disc degeneration, lumbar region; strain of muscle, fascia, and tendon of the lower back; and strain of muscle and tendon of back wall of thorax. OWCP also received September 20 and October 29, 2018 physical therapy notes.

By decision dated November 14, 2018, OWCP denied appellant's claim. It accepted that the September 2, 2018 incident occurred as alleged, and that medical conditions had been diagnosed. However, it found that appellant failed to establish causal relationship.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA,[3] that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.[4] These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[5]

To determine if an employee has sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Fact of injury consists of two components that must be considered in conjunction with one another. The first

[3] *See C.W.*, Docket No. 19-0231 (issued July 15, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[4] *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[5] *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

component is whether the employee actually experienced the employment incident that allegedly occurred.[6] The second component is whether the employment incident caused a personal injury.[7]

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.[8] The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.[9] Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[10]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish diagnosed medical conditions causally related to the accepted September 2, 2018 employment incident.

Appellant submitted reports from Dr. Saechao and Dr. Mahmoud diagnosing medical conditions. However, these reports failed to explain with medical rationale the nature of the relationship between the diagnosed conditions and the specific employment incident on September 2, 2018. Dr. Saechao related that there was no specific event of an injury or illness." and no prior acute trauma or cumulative trauma to the affected body part, pain in his upper and lower back from repetitive motion, lifting, carrying of packages as a postal worker. Dr. Mahmoud merely repeated the same language in his report. While these reports suggested in vague terms that repetitive employment duties caused appellant upper and lower back pain, no explanation was provided as to how lifting boxes into big containers on September 2, 2018 caused his diagnosed conditions. A medical opinion should reflect a correct history and offer a medically sound explanation by the physician of how the specific employment incident physiologically caused or aggravated the diagnosed conditions.[11] As neither of these physicians addressed how the accepted employment incident of lifting boxes on September 2, 2018 physiologically caused appellant's diagnosed conditions, the Board finds that these reports are insufficient to establish appellant's claim.

In an October 31, 2018 report, Dr. Nguyen diagnosed intervertebral disc degeneration, fascia and low back tendon strain, and muscle and tendon thorax strain. However, she did not opine as to the cause of appellant's conditions. The Board has held that medical evidence that

[6] *Elaine Pendleton,* 40 ECAB 1143 (1989).

[7] *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

[8] *L.D.*, Docket No. 17-1581 (issued January 23, 2018); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[9] *L.D., id.*; *see also Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

[10] *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

[11] *K.J.*, Docket No. 18-1520 (issued June 13, 2019).

does not offer an opinion regarding the cause of an employee's condition is of no probative value regarding the issue of causal relationship.[12] Dr. Nguyen's report, therefore, is insufficient to establish appellant's claim.

The record contains a September 16, 2018 note from Dr. Diep, a chiropractor. Under FECA the term physician includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist. OWCP's regulations at 20 C.F.R. § 10.5(bb) have defined subluxation as an incomplete dislocation, off-centering, misalignment, fixation or abnormal spacing of the vertebrae which must be demonstrable on an x-ray film to an individual trained in the reading of x-rays. If the diagnosis of a subluxation as demonstrated by x-ray is not established, the chiropractor is not a physician as defined under FECA and his or her report is of no probative value to the medical issue presented.[13] As Dr. Diep did not diagnose spinal subluxations demonstrated by x-ray evidence, he is not considered a physician under FECA and his opinion is of no probative medical value.[14]

The record also contains reports from a physician assistant, a physical therapist, and an acupuncture specialist. These reports do not constitute competent medical evidence because these individuals are not considered "physicians" as defined under FECA.[15] Consequently, their medical findings and opinions are insufficient to establish entitlement to compensation benefits.

As appellant has not submitted rationalized medical evidence to establish that his diagnosed medical conditions were causally related to the accepted employment incident of September 2, 2018, the Board finds that he has not met his burden of proof.[16]

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

[12] *C.G.*, Docket No. 19-0480 (issued July 18, 2019).

[13] *R.P.*, Docket No. 19-0271 (issued July 24, 2019).

[14] Section 8101(3) of FECA, which defines services and supplies, limits reimbursable chiropractic services to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the Secretary. 5 U.S.C. § 8101(3). *See Thomas W. Stevens*, 50 ECAB 288 (1999); *George E. Williams*, 44 ECAB 530 (1993).

[15] Section 8101(2) of FECA provides that medical opinion, in general, can only be given by a qualified physician. This section defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law. *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006). A report from a physician assistant or certified nurse practitioner will be considered medical evidence if countersigned by a qualified physician. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013).

[16] *Supra* note 10.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish diagnosed medical conditions causally related to the accepted September 2, 2018 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the November 14, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 18, 2019
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board